

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**
WILMINGTON, DELAWARE 19801

John K. Welch
Judge

November 19, 2010

Ms. Mary W. Wainaina
52 Cheswold Blvd 2B
Newark, Delaware 19713
Pro-Se Plaintiff

Henry A. Heiman, Esquire
Cooch & Taylor, P.A.
1000 West Street, 10th Floor
P.O. Box 1680
Wilmington, Delaware 19899
*Attorney for Defendant Bayshore Ford
Truck Sales Inc.*

Mr. David G. Mwangi
8616 Delegge Road
Rosedale, Maryland 21237
Pro-Se Defendant

**Re: *Mary W. Wainaina v. Bayshore Ford Truck Inc. and
David G. Mwangi***
Case No.: CPU4-09-002820

Date Submitted: September 17, 2010

Date Decided: November 19, 2010

**MEORANDUM OPINION FOLLOWING
INQUISITION HEARING ON DAMAGES**

This is the Court's decision regarding damages to be awarded to Plaintiff Mary W. Wainaina (hereinafter "Plaintiff").

On April 28, 2009, Plaintiff filed a Complaint asserting that the present action is for breach of contract for the sale of a vehicle and for recovery of compensatory, consequential, liquidated and punitive damages against Defendants for fraud and their failure to provide proper disclosure under the contract with Plaintiff. Service was

properly effectuated upon both Defendants. Defendant David G. Mwangi failed to file an Answer to the Complaint and on May 14, 2010, this Court entered Default Judgment in favor of Plaintiff Mary W. Wainaina against Defendant David G. Mwangi.

As will be outlined below, for notice reasons, the original Damages Inquisition hearing held on September 17, 2010 was rescheduled for November 19, 2010 with due notice to all parties. Co-defendant David G. Mwangi received summons at four (4) different addresses for the re-scheduled November 19, 2010 hearing and failed to appear. At the November 19, 2010 hearing, the plaintiff and co-defendant moved into evidence after co-defendants Mwangi's failure to appear, the evidence and documents in the record from the September 17, 2010 hearing. This Limited Inquisition Hearing was previously held in this Court on September 17, 2010 in order to determine damages against Defendant David G. Mwangi.

I. Background

Plaintiff asserted in her Complaint that the action is for breach of contract for the sale of a vehicle and for recovery of compensatory, consequential, liquidated and punitive damages against Defendants for fraud and their failure to provide proper disclosure under the contract with Plaintiff. Defendant David G. Mwangi failed to appear for the hearing, although it was brought to the Court's attention and addressed in a separate Order that Mwangi failed to receive a summons or notice for the September 17, 2010 Inquisition hearing. Defendant Bayshore Ford Truck Sales Inc.

filed a Motion to Dismiss which was Denied by this Court on November 20, 2009.

Henry A. Heiman, Esquire appeared for Defendant Bayshore Ford Truck Sales Inc.

Plaintiff Mary W. Wainaina appeared Pro Se. After the receipt of documentary evidence¹ and sworn testimony, this is the Court's Final Order and Opinion.

¹ The Court received the following documents into evidence: Plaintiff's Exhibit # 1 (Plaintiff's Response to Request for Documents); Plaintiff's Exhibit # 2 (; Plaintiff's Exhibit # 3 (Letter to Mary W. Wainaina and David Mwangi from Citizens Automobile Finance, Inc. dated January 5, 2007 denying a loan request); Plaintiff's Exhibit # 4 (Two copies of Transaction Summaries from 12-5-06 through 5-16-08 from Chase Auto Finance bearing the Account Number 10634512052907 but lacking a Name); Plaintiff's Exhibit # 5 (Apartment Lease Agreement between Indy Associates and Mary W. Wainaina dated January 1, 2006 for Independence Square Apartments, One Maryland Circle, Whitehall, Pennsylvania for the term of one year; Tenant Ledger for such apartment dated 7-14-09 For All Transactions from 1-1-06 to 7-31-08); Plaintiff's Exhibit # 6 (United States Postal Service Certified Mail Receipt dated 7-29-08 to David G. Mwangi, 8616 Delege Rd., Rosedale, MD 21237; Postal Receipts; Gas Station Receipts; Delaware Turnpike Receipts; Maryland Transportation Authority Receipts; Pennsylvania Turnpike Receipts; Checks drawn on Bank of America from Plaintiff to Defendant Mwangi as follows: Check # 1460 dated 1-15-07 in the amount of \$397.55 "For Truck"; Check # 1458 dated 1-1-07 in the amount of 50.00 "For Insurance Truck"; Check # 1472 dated 2-17-07 in the amount of \$547.55 "For Truck, Insurance"; Check # 1505 dated 4-18-07 in the amount of \$47.00; Check # 1483 dated 3-17-07 in the amount of \$1033.55; Check # 1497 dated 4-3-07 in the amount of \$381.00; Check # 1501 dated 4-14-05 in the amount of \$381.55; Checks drawn on Bank of America from Plaintiff to Chase Auto Finance as follows: Check # 1699 dated 4-12-08 in the amount of \$763.09; Check # 1725 dated 5-12-08 in the amount of \$763.09; Check # 1645 dated 1-7-08 in the amount of \$763.09; Check # 1661 dated 2-12-08 in the amount of 763.09; Check # 1671 dated 3-10-08 in the amount of \$763.09; Check # 1519 dated 5-19-07 in the amount of \$381.55; Check # 1560 dated 8-5-07 in the amount of \$763.09; Check # 1522 dated 5-22-07 in the amount of 381.55; Check # 1530 dated 6-12-07 in the amount of \$763.09; Check # 1542 dated 7-6-07 in the amount of \$763.09; Check # 1621 dated 11-14-07 in the amount of \$763.09; Check # 1633 dated 12-7-07 in the amount of \$763.09; Check # 1574 dated 9-10-07 in the amount of \$763.09; Check # 1593 dated 10-10-07 in the amount of \$763.09; Check drawn on American Spirit Federal Credit Union from Plaintiff to David Dunn dated 7-18-09 in the amount of \$200.00 "For Legal Services"; Check drawn on American Spirit Federal Credit Union from Plaintiff to Sheriff N.C.C. dated 10-5-09 "For Court Case Fee"; Checks to Crossland & Associates, LLC for Legal Services; Check to Baltimore County Sheriff dated 1-11-10 in the amount of \$60.00; Plaintiff's Exhibit # 7 (Document listing Plaintiff's Damages); Plaintiff's Exhibit # 8 (Letter from Defendant Mwangi to Katherine R. Witherspoon, Esquire of Crossland Associates, LLC in which Defendant Mwangi disputes wrongdoing on his part and offers the return of the vehicle and title to Plaintiff); Plaintiff's Exhibit # 9 (Promissory Note and Security Agreement – Consumer Paper from Chase with the Borrower listed as Plaintiff setting forth the Federal Truth-In-Lending Disclosures and Amounts bearing the signature of Plaintiff in which the Primary Purpose of Loan is Personal, Family, or Household Purposes or Personal Investment dated Note Date 5-17-07 and Documents included supporting Refinancing); Plaintiff's Exhibit # 10 (FedEx Envelope and Air bill from Steve Balogh with Defendant Bayshore Finance Dept. to Plaintiff dated 12-12-06); Plaintiff's Exhibit # 11 (Letter from Plaintiff to Chase Bank with the handwritten date of 5-21-08 stating that Plaintiff is immediately stopping payments for the vehicle for which she does not possess and providing the address of Defendant Mwangi as the registered owner of the vehicle; Postal Office Receipt and U.S. Postal Office Certified Mail Receipt to JPMorgan Chase Bank); Plaintiff's Exhibit # 12 (Letter from Katherine R. Witherspoon, Esquire with Crossland & Associates, LLC to Defendant Mwangi in regard to a Demand for a Debt Owed to Mary Wainaina); Plaintiff's Exhibit # 13 (Photograph of a white truck and car in driveway and green van bearing a Maryland license plate parked on street – Written on back of the photograph "Taken on 5-20-07"); Plaintiff's Exhibit # 14 (Photograph of a white pick-up truck with a trailer attached); Defendant's Exhibit are those submitted solely by Defendant Bayshore – Defendant's Exhibit # 1 (Letter to Jeff Lippman of Weinstock, Friedman & Friedman, P.A. from Joe Tracy on Bayshore Letterhead denying any wrongdoing in regard to forgery and offering options for Plaintiff to obtain title or reimbursement with the caveat that full cooperation is needed from Plaintiff

II. Facts

The Court considers the following facts relevant in reaching the decision. Plaintiff purchased a 2003 Ford F350 truck from Bayshore Ford Truck Sales, Inc. (hereinafter “Bayshore”) on December 5, 2006 in order to start a business of hauling vehicles with Defendant David G. Mwangi (hereinafter “Mwangi”) as partners. Plaintiff purchased the vehicle when Plaintiff and Mwangi reached a verbal agreement to form a business; however, Plaintiff did not inform the financing institution that the vehicle was to be used for a business venture. Plaintiff stated that Bayshore misrepresented to her orally and in writing the terms of the contract in that Bayshore misrepresented that she was the principal buyer of the vehicle. Initially, the Invoice/Bill of Sale for December 5, 2006, Delaware Motor Vehicle Temporary Registration, Buyer’s Order and Odometer Disclosure Statement² were listed solely in Plaintiff’s name. Defendant David G. Mwangi signed the above documents as well. The address listed on the above documents is 605 Sopwith Drive, Apartment K,

and Defendant Mwangi); Defendant’s Exhibit # 2 (Letter from Mwangi to Plaintiff dated 6-1-07 offering return of the vehicle for reimbursement of Mwangi’s expenses); Defendant’s Exhibit # 3 (Letter from Mwangi to Plaintiff dated 5-2-07 offering resolution of the business arrangement and loan); Defendant’s Exhibit # 4 (Letter from Mwangi to Katherine R. Witherspoon, Esquire with Crossland Associates, LLC dated 12-18-08 restating offer to Plaintiff); Defendant’s Exhibit # 5 (Defendant Bayshore’s Response to First Set of Request for Production of Plaintiff); Defendant’s Exhibit # 6 (Letter from Jeffrey M. Lippman with Weinstock, Friedman & Friedman, P.A. to Joe Tracy with Bayshore dated 11-11-08 stating that their office no longer represents Plaintiff); Defendant’s Exhibit # 7 (Letter from Jeffrey M. Lippman with Weinstock, Friedman & Friedman, P.A. to Joe Tracy with Bayshore dated 3-7-08 stating receipt of a February 29, 2008 fax and the forwarding of correspondence to his client, Plaintiff); Defendant’s Exhibit # 8 (Letter from Katherine R. Witherspoon, Esquire with Crossland & Associates, LLC to Joe Tracy at Bayshore dated 12-12-08 in regard to the Sale to Plaintiff; Invoice/Bill of Sale from Bayshore to Plaintiff; Temporary Registration of the vehicle to Plaintiff listing Mwangi’s Maryland address; Odometer Disclosure Statement; Buyers Order from Bayshore; Retail Installment Contract with Balloon Payment Options from Chase with Plaintiff’s and Mwangi’s names listed bearing both their signatures; Power of Attorney for Mwangi for Certificate of Title for the vehicle; Letter from Candice L. Feiser, TC of Bayshore to Maryland Motor Vehicle Administration for Change of Title to Mwangi; Amended Invoice/Bill of Sale from Bayshore to Mwangi

² Defendant’s Exhibit # 8.

Baltimore, Maryland 21220. This address was listed by Plaintiff on the documents as it is her business address. Plaintiff signed all documents with the Maryland address (the business address) where Mwangi resided.

On the same date as the purchase date for the vehicle, Plaintiff and Defendant David Mwangi were assisted by Defendant Bayshore Ford Truck Sales Inc. in financing the purchase of the vehicle through a loan. The Retail Installment Contract³ listed Plaintiff as the Buyer and Mwangi as the Co-Buyer. However, Plaintiff testified that both she and Mwangi purchased the vehicle for their joint business. Plaintiff stated that she began paying the loan for the vehicle before the business was up and running. Plaintiff stated that she would send Mwangi a check for the vehicle payment.

Further, Plaintiff's credit record was used to obtain the loan for the vehicle and although Mwangi co-signed the loan, Plaintiff made all payments on the vehicle solely beginning in May 2007. Plaintiff also stated that she paid Mwangi \$1,500.00 for a trailer in which she never used nor received any profit from its use. Plaintiff stated that she further paid Mwangi approximately \$2,000.00 for repairs to and maintenance on the vehicle.

On or around February 17, 2007, Mwangi contacted Bayshore, of which Plaintiff had no knowledge, to request that the title to the vehicle be corrected in that the title reflects Mwangi as the owner and delete Plaintiff from the title as owner.

³ *Id.*

Bayshore sent correspondence⁴ to the Maryland Motor Vehicle Administration stating that Bayshore sold the vehicle to Mwangi and on the billing Mwangi's wife's name was printed. Further, the correspondence states that Plaintiff is not owner or co-owner of the vehicle and due to that white-out was applied over her name and Mwangi's name typed in the proper spot. The correspondence concludes by stating that no fraud was intended. Thus, the amended Invoice/Bill of Sale⁵ lists the vehicle as Sold To Mwangi. Plaintiff is not and at no time was ever related to Mwangi by blood, marriage or cohabitation. Plaintiff was never contacted by Bayshore regarding Mwangi's misrepresentations. However, despite the change to the Invoice/Bill of Sale⁶, Plaintiff is still listed on the Financing Contract as the principal Buyer and Mwangi as the Co-Buyer.

An Application for Certificate of Title⁷ was completed by Mwangi and submitted to the Maryland Motor Vehicle Administration in which Mwangi was given sole ownership of the vehicle.

At some point between December 2006 and May 2007, Plaintiff observed the vehicle and stated that the vehicle looked old with the tires worn out and displayed signs advertising the business. At which time, Plaintiff contacted the police. Mwangi claimed the vehicle as his own and had the title to the vehicle. However, Plaintiff's documents indicated that she was the sole owner of the vehicle. Plaintiff them

⁴ Defendant's Exhibit # 8.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

discovered that there were 18,000 more miles on the vehicle than when she had purchased it. Plaintiff contacted Bayshore who stated that they did not do anything in reference to the vehicle. Plaintiff stated that despite her requests, she never received any paperwork from Bayshore to indicate how the title had passed to Mwangi. Plaintiff then contacted an employee of Bayshore who believed that she and Mwangi were relatives and informed her that unless Mwangi surrendered the documents to her then her name could not be added to the title of the vehicle.

On or around November 13, 2008, Plaintiff contacted the Maryland Motor Vehicle Administration and was informed that the title to the vehicle was in Mwangi's name and that her name had been taken off of the title.

Plaintiff contacted the Office of the Attorney General regarding this matter to which an investigation commenced. The result of the investigation was a finding of no wrongdoing as to Bayshore.

Plaintiff was unaware of how the State of Maryland issues title to a vehicle in that the owner of the vehicle retains the title of the vehicle while the financing institution retains a lien. Plaintiff stated that she had no intention for the vehicle to be registered in Maryland and that she was unaware that a vehicle cannot be registered simultaneously in two states.

Plaintiff testified that she believed that as a resident of Pennsylvania, she would be able to register the vehicle in Maryland and stated that she was unaware that a vehicle had to be registered in the state in which a person resides.

As a result, Mwangi had sole possession and ownership of the vehicle and refused to make his share of the monthly payments for the vehicle. Plaintiff continued to make the payments alone until she could no longer afford to do so. Testimony indicated that Mwangi sent two letters⁸ to Plaintiff in which he offered to return the vehicle to her in exchange for \$3,000.00 to which Plaintiff disputed that Mwangi asked for \$3,000.00 in the letters. Plaintiff stated that she received a letter⁹ from her former attorney in Mwangi's handwriting.

Plaintiff stated that she lost money in payments for the vehicle that she did not use or derive any profit from. Further, Plaintiff stated that her credit has been negatively affected. Plaintiff stated that Bayshore aided Mwangi in defrauding her.

Plaintiff seeks compensatory and consequential damages arising from the loss of money and deposits paid to Bayshore and the automobile financing company, liquidated damages including truck financing, truck insurance, legal fees and travel expenses in an amount not less than \$17,673.17 and punitive damages. Plaintiff testified to the following damages: travel expenses from Pennsylvania to Maryland and from Pennsylvania to Delaware to meet Mwangi; the defunct business venture; absence from her employment; problems with her children; the loss of a lot of money; payments for a vehicle that Mwangi was using; failing to work and expenses.

III. Decision

⁸ Defendant's Exhibits # 2 and # 3.

⁹ Defendant's Exhibit # 4.

Plaintiff provided Bayshore with an address in Maryland which she used as a business address in all the documents she signed with Bayshore. Therefore, Plaintiff held herself out to be residing in Maryland. The Maryland address Plaintiff provided to Bayshore was the home address of Defendant Mwangi. Bayshore then sent the title of the vehicle to the Maryland address provided by Plaintiff. It was Defendant Mwangi who forged the document to obtain the title to the vehicle in his name alone. I find there is credible evidence of damages resulting from Defendant Mwangi's breach of an oral agreement.

The Court, after considering the documentary evidence and sworn testimony, finds that Plaintiff is entitled to the amount of payments that she has made to the financing institution for the vehicle as of May 1, 2007 as well as to the reasonable value of the vehicle as of May 1, 2007. Mwangi held the title to the vehicle thus depriving Plaintiff of the title.

Testimony and evidence presented at trial indicated that Plaintiff suffered the following actual pecuniary losses by a preponderance of the evidence:

Payments Made to Chase on the Loan of the Vehicle from May 15, 2007 to May 12, 2008	\$9,920.18
Reasonable Value of the Vehicle as of May 1, 2007	<u>\$10,625.00</u>
Total Compensatory Damages	\$20,545.18

It is premature for the Court to address damages in relation to Bayshore as a trial on the merits is pending. Further, there is no award of consequential damages, as

no formal executed contract exists between Plaintiff and Mwangi; thus no basis to find consequential damages for breach of a contract.

There is no award of liquidated damages because Mwangi made several offers to Plaintiff to return the vehicle to her. Lastly, there is no award of punitive damages on the basis that Plaintiff entered this situation.

The Court hereby directs the Clerk to enter Judgment in favor of Plaintiff, Mary W. Wainaina, and against Defendant, David G. Mwangi as follows:

Compensatory Damages in the amount of \$20,545.18, together with Pre-Judgment Interest from May 1, 2007 until May 14, 2010 and Post-Judgment Interest from May 14, 2010 until paid, both at the legal rate of interest, 6 *Del.C.* §2301 *et seq.* Plaintiff's Court Costs shall also be paid by Defendant Mwangi.

IT IS SO ORDERED this 19th day of November, 2010.

John K. Welch
Judge

/jb

cc: Ms. Tamu White, Chief Civil Court Clerk
Mr. Jose Beltran, Senior Civil Court Clerk